

BCI Exhibit 632

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
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5 In re:)
6) Chapter 11
7 LEHMAN BROTHERS) Case No. 08-13555(JMP)
8) (Jointly Administered)
9 HOLDINGS, INC., et al.,)
10)
11 Debtors.)
12 -----)
13

14 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
15 ROBERT MESSINEO
16 New York, New York
17 Thursday, April 1, 2010
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22 Reported by:
23 KRISTIN KOCH, RPR, RMR, CRR, CLR
24 JOB NO. 29427
25

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<p>1 2 3 April 1, 2010 4 2:10 p.m. 5 6 7 Highly Confidential Videotaped 8 Deposition of ROBERT MESSINEO, held at the 9 offices of Weil, Gotshal & Manges LLP, 767 10 Fifth Avenue, New York, New York, before 11 Kristin Koch, a Registered Professional 12 Reporter, Registered Merit Reporter, 13 Certified Realtime Reporter, Certified 14 Livenote Reporter and Notary Public of the 15 State of New York. 16 17 18 19 20 21 22 23 24 25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 2 A P P E A R A N C E S : 3 4 5 JONES DAY, LLP 6 Attorneys for Lehman Brothers, Inc. 7 222 East 41st Street 8 New York, New York 10017-6702 9 BY: WILLIAM J. HINE, ESQ. 10 11 12 13 BOIES, SCHILLER & FLEXNER, LLP 14 Attorneys for Barclays and Alastair 15 Blackwell 16 5301 Wisconsin Avenue, N.W. 17 Washington, D.C. 20015 18 BY: AMY L. NEUHARDT, ESQ. 19 - and - 20 575 Lexington Avenue - 7th floor 21 New York, New York 10022 22 BY: MICHELLE M. SEKOWSKI, ESQ. 23 24 25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 2 A P P E A R A N C E S : (Continued) 3 4 5 QUINN EMANUEL URQUHART OLIVER & HEDGES LLP 6 Attorneys for Creditors Committee 7 51 Madison Avenue 8 New York, New York 10010 9 BY: ERIC M. KAY, ESQ. 10 11 12 HUGHES HUBBARD & REED LLP 13 Attorneys for SIPA Trustee 14 1775 I Street, N.W. 15 Washington, D.C. 20006-2410 16 BY: JOHN F. WOOD, ESQ. 17 - and - 18 One Battery Park Plaza 19 New York, New York 10004-1482 20 BY: MARY ELIZABETH PIERCE, ESQ. 21 22 23 24 25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 2 A P P E A R A N C E S : (Continued) 3 4 5 WEIL GOTSHAL & MANGES LLP 6 Attorneys for Robert Messineo 7 767 Fifth Avenue 8 New York, New York 10153 9 BY: JONATHAN POLKES, ESQ. 10 CAROLINE ZALKA, ESQ. 11 12 13 ALSO PRESENT: 14 15 JOSH LIPSON, Legal Video Specialist 16 17 18 19 20 21 22 23 24 25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 2 IT IS HEREBY STIPULATED AND AGREED 3 by and between the attorneys for the 4 respective parties herein, that filing and 5 sealing be and the same are hereby waived. 6 IT IS FURTHER STIPULATED AND AGREED 7 that all objections, except as to the form 8 of the question, shall be reserved to the 9 time of the trial. 10 IT IS FURTHER STIPULATED AND AGREED 11 that the within deposition may be sworn to 12 and signed before any officer authorized 13 to administer an oath, with the same 14 force and effect as if signed and sworn 15 to before the Court. 16 17 18 19 20 - oOo - 21 22 23 24 25 TSG Reporting - Worldwide 877-702-9580</p>	<p>1 2 (Deposition Exhibit 682, Declaration 3 of Robert L. Messineo, marked for 4 identification.) 5 * * * 6 THE VIDEOGRAPHER: This is the start 7 of tape number 1 of the videotaped 8 deposition of Robert Messineo in the matter 9 in re Lehman. 10 Today's date is April 1st, 2010 at 11 approximately 2:10 p.m. 12 Will the court reporter please swear 13 in the witness. 14 ROBERT MESSINEO, 15 called as a witness, having been duly sworn 16 by a Notary Public, was examined and 17 testified as follows: 18 EXAMINATION BY 19 MS. NEUHARDT: 20 Q. Good afternoon, Mr. Messineo. My 21 name is Amy Neuhardt. I am with Boies, 22 Schiller & Flexner and I am representing 23 Barclays in this matter. 24 A. Good afternoon. 25 Q. Could you tell me where you are TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 Messineo - Highly Confidential 2 employed? 3 A. The law firm of Weil, Gotshal & 4 Manges. 5 Q. And you are a partner there? 6 A. Yes, I am. 7 Q. And is that the same place you were 8 employed in September of 2008? 9 A. Yes. 10 Q. Okay. And you were a partner at 11 that time as well? 12 A. That's correct. 13 Q. Have you ever been deposed before? 14 A. Yes, I have. 15 Q. Okay. So you know then that if you 16 don't understand one of my questions, you can 17 ask me to clarify, or if you need a break, you 18 can let me know. 19 A. I understand. 20 Q. Okay. In connection with your work 21 as a Weil partner in September of 2008, were 22 you involved in a transaction between Barclays 23 and Lehman Brothers? 24 A. Yes, I was. 25 Q. Okay. And what was your role in TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential 2 that transaction? 3 A. I was involved in the negotiation 4 and the preparation of the documents that 5 were the Asset Purchase Agreement with regard 6 to the sale of the Lehman capital markets and 7 investment banking business. 8 Q. Okay. Which party were you 9 representing? 10 A. I was representing Lehman. 11 Q. Okay. I am going to hand you or the 12 court reporter will hand you what's been marked 13 as Deposition Exhibit 682. After you have had 14 a chance to look at it my question will be do 15 you recognize it? 16 A. Yes, I do. 17 Q. And on the last -- what is this 18 document? 19 A. This is my declaration from a few 20 months ago. 21 Q. Okay. And on the last page is that 22 your signature? 23 A. Yes, it is. 24 Q. Okay. You can take a moment to look 25 it over if you would like, but my question -- TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 Messineo - Highly Confidential</p> <p>2 my first question will be is there anything in</p> <p>3 this declaration that you now consider</p> <p>4 inaccurate?</p> <p>5 A. No.</p> <p>6 Q. Okay. All right. Paragraph 3 of</p> <p>7 your declaration refers to an Exhibit A. It's</p> <p>8 a Clarification Letter. I can tell you that</p> <p>9 the version of this that was served to us did</p> <p>10 not have an Exhibit A, so I am going to give</p> <p>11 you what was previously marked as Deposition</p> <p>12 Exhibit 25 (handing) and ask you whether or not</p> <p>13 this document is the same as what you had</p> <p>14 intended to attach to your declaration.</p> <p>15 A. This appears to be the final</p> <p>16 Clarification Letter, yes.</p> <p>17 Q. Okay. So let's look at paragraph 2</p> <p>18 of your declaration. The third sentence</p> <p>19 begins: "I was one of the Weil attorneys</p> <p>20 responsible for drafting the letter agreement</p> <p>21 dated September 20, 2008, which was executed on</p> <p>22 September 22, 2008 by Barclays, LBHI, James W.</p> <p>23 Giddens as the trustee for the SIPA liquidation</p> <p>24 of LBI, and LB 745 LLC (the Clarification</p> <p>25 Letter)." Is that correct?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. Did you have responsibilities</p> <p>4 in connection with the Clarification Letter</p> <p>5 other than participating in the drafting?</p> <p>6 A. I don't -- I am not sure I</p> <p>7 understand what you are asking.</p> <p>8 Q. Sure. Were you one of the Weil</p> <p>9 attorneys who would have been directly</p> <p>10 interacting in negotiations with</p> <p>11 representatives of Barclays?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So you would have been</p> <p>14 speaking to people from Barclays or Barclays'</p> <p>15 attorneys in connection with the Clarification</p> <p>16 Letter?</p> <p>17 A. Correct.</p> <p>18 Q. When I refer to representative of</p> <p>19 Barclays throughout the deposition, actually I</p> <p>20 will be intending to mean Barclays as well as</p> <p>21 its agents, which would be Cleary Gottlieb,</p> <p>22 Michael Klein, who is an independent financial</p> <p>23 advisor. So will you understand that to be the</p> <p>24 meaning as I refer to representatives of</p> <p>25 Barclays?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 Messineo - Highly Confidential</p> <p>2 A. Yes.</p> <p>3 Q. Okay, great.</p> <p>4 Now, paragraph 4 of your</p> <p>5 declaration, page 2, reads: "I understood at</p> <p>6 all times while the Clarification Letter was</p> <p>7 being drafted that both securities and cash</p> <p>8 were being held in accounts maintained by LBI</p> <p>9 for the purpose of complying with Rule 15c3-3</p> <p>10 for the benefit of and in order to protect the</p> <p>11 interests of customers of LBI. The accounts so</p> <p>12 holding securities or cash pursuant to Rule</p> <p>13 15c3-3 are herein after referred to as the</p> <p>14 customer reserve accounts."</p> <p>15 Is that an accurate statement?</p> <p>16 A. Yes, it is.</p> <p>17 Q. Okay. Do you consider yourself an</p> <p>18 expert in SEC Rule 15c3-3?</p> <p>19 A. No.</p> <p>20 Q. Okay. Had you had any prior</p> <p>21 dealings with that rule prior to the</p> <p>22 Lehman/Barclays transaction?</p> <p>23 A. Only a very small degree.</p> <p>24 Q. Okay. And do you consider yourself</p> <p>25 to be an expert in the Securities Investment</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 Protection Act known as SIPA?</p> <p>3 A. I do not.</p> <p>4 Q. Okay. And had you had any prior</p> <p>5 matters that involved interpretation of SIPA</p> <p>6 prior to the Lehman/Barclays matter?</p> <p>7 A. Again, only in a small degree.</p> <p>8 MS. NEUHARDT: I am going to hand</p> <p>9 you what will be marked as Deposition</p> <p>10 Exhibit 683.</p> <p>11 (Deposition Exhibit 683, Declaration</p> <p>12 of Victor I. Lewkow, marked for</p> <p>13 identification.)</p> <p>14 Q. Have you ever seen this document</p> <p>15 before?</p> <p>16 A. Yes.</p> <p>17 Q. In what context have you seen it</p> <p>18 before?</p> <p>19 A. I saw it recently in connection with</p> <p>20 preparation for this deposition.</p> <p>21 Q. Okay. Did you review any other</p> <p>22 documents in connection with this deposition?</p> <p>23 A. I also looked at one of the</p> <p>24 memoranda that had been submitted.</p> <p>25 Q. Oh, that was publicly filed in</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 Messineo - Highly Confidential</p> <p>2 this --</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Okay. Do you know</p> <p>5 Mr. Lewkow?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Okay. Who is he?</p> <p>8 A. He is a partner at Cleary Gottlieb</p> <p>9 and he was the lead partner in the negotiation</p> <p>10 of the acquisition of the Barclays agreement.</p> <p>11 Q. Okay. Do you have any reason to</p> <p>12 doubt Mr. Lewkow's honesty or integrity?</p> <p>13 A. No.</p> <p>14 Q. Okay. Would you take a moment and</p> <p>15 read paragraphs 18 to 20 of his declaration.</p> <p>16 (Document review.)</p> <p>17 A. 18 and 20, yes.</p> <p>18 Q. 18 through 20. Sorry.</p> <p>19 (Document review.)</p> <p>20 A. Okay.</p> <p>21 Q. So those paragraphs recount</p> <p>22 Mr. Lewkow's recollection of a conversation</p> <p>23 that occurred in the hallway of Weil Gotshal on</p> <p>24 either the late night of September 21st, 2008</p> <p>25 or early morning of September 22nd, 2008;</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 correct?</p> <p>3 A. That's what they describe.</p> <p>4 Q. Okay. Do you recall participating</p> <p>5 in a conversation in the hallway such as</p> <p>6 described by Mr. Lewkow?</p> <p>7 A. I don't recollect this specific</p> <p>8 conversation that he is describing.</p> <p>9 Q. Okay. Do you have any reason to</p> <p>10 believe that that conversation did not occur as</p> <p>11 described by Mr. Lewkow?</p> <p>12 MR. WOOD: Objection to form.</p> <p>13 A. Well, I can only say that in</p> <p>14 conversations that I had with people and in the</p> <p>15 course of the drafting that I was involved</p> <p>16 with, there was never any question raised to</p> <p>17 this effect that if securities could not come</p> <p>18 out of the custodial accounts, that they would</p> <p>19 be made available otherwise by Lehman.</p> <p>20 Q. But do you have any reason to doubt</p> <p>21 that Mr. Lewkow is telling the truth about his</p> <p>22 version of that hallway conversation in his</p> <p>23 declaration?</p> <p>24 MR. WOOD: Objection to the form.</p> <p>25 A. It's not something that I can</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 Messineo - Highly Confidential</p> <p>2 correspond with.</p> <p>3 Q. So you have no personal knowledge of</p> <p>4 it one way or the other?</p> <p>5 A. I did not have this conversation</p> <p>6 with Mr. Lewkow.</p> <p>7 Q. Okay. All right. Let's look back</p> <p>8 at your declaration, paragraph 8.</p> <p>9 Paragraph 8: "I understood the</p> <p>10 phrase "or securities of substantially the same</p> <p>11 nature and value" was included at the end of</p> <p>12 the second sentence of paragraph 8 of the</p> <p>13 Clarification Letter to take account of the</p> <p>14 potential for there to be a change in the</p> <p>15 specific securities held in the customer</p> <p>16 reserve accounts between September 22nd and the</p> <p>17 date when it became permissible to withdraw</p> <p>18 securities from the customer reserve accounts."</p> <p>19 Is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. Did you personally draft that</p> <p>22 clause, "or securities of substantially the</p> <p>23 same nature and value"?</p> <p>24 A. I can't recollect whether I</p> <p>25 specifically drafted it. It's possible that I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 did.</p> <p>3 Q. Okay.</p> <p>4 A. I think the clause was originally</p> <p>5 somewhat different, but I just can't say for</p> <p>6 sure whether I drafted it. I might have.</p> <p>7 Q. Okay. Did you get your</p> <p>8 understanding of the meaning of that phrase as</p> <p>9 set forth in paragraph 8 of your declaration</p> <p>10 from any representative of Barclays?</p> <p>11 A. I can't recollect specific</p> <p>12 conversation with specific persons, but my</p> <p>13 understanding of that phrase grew out of my</p> <p>14 participation in the discussions and in the</p> <p>15 negotiations that were going on that night.</p> <p>16 Q. So you can't recall discussing this</p> <p>17 with anybody from Barclays?</p> <p>18 A. I don't have specific recollection</p> <p>19 of discussing this phrase.</p> <p>20 Q. Okay. After you drafted the phrase</p> <p>21 did you communicate your understanding of that</p> <p>22 phrase to any representative of Barclays?</p> <p>23 A. I don't recollect a specific</p> <p>24 conversation.</p> <p>25 Q. Do you recollect generally having</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 Messineo - Highly Confidential</p> <p>2 had a conversation to that effect?</p> <p>3 A. I recollect generally this phrase</p> <p>4 coming into the agreement and this being in the</p> <p>5 context of the fact that there were securities</p> <p>6 in this account and that the way the phrase --</p> <p>7 the way the related phrase had been drafted is</p> <p>8 it referred to the specific securities on that</p> <p>9 date and so it was necessary to have this</p> <p>10 phrase in order to properly present the thing.</p> <p>11 THE COURT REPORTER: I'm sorry?</p> <p>12 A. Properly present the matter.</p> <p>13 Q. Can you look at the Clarification</p> <p>14 Letter, Exhibit 25, and show me where you are</p> <p>15 referring to securities as of a specific date?</p> <p>16 A. Did you say it was paragraph 25?</p> <p>17 Q. Sorry, it's Deposition Exhibit 25.</p> <p>18 It is paragraph 8, which is on page 4.</p> <p>19 A. Okay. Yes, because it says</p> <p>20 securities -- 769 million of securities is held</p> <p>21 by or on behalf of LBI on the date hereof</p> <p>22 pursuant to Rule 15c3-3.</p> <p>23 Q. Okay. And was it your understanding</p> <p>24 that there was only 769 million of securities</p> <p>25 in that account?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 A. That was the current amount or value</p> <p>3 that we were told was in the account.</p> <p>4 Q. Who told you that?</p> <p>5 A. Again, I can't recollect who</p> <p>6 specifically. The information would have come</p> <p>7 from someone at Lehman.</p> <p>8 Q. And it was your understanding that</p> <p>9 that was the total amount of securities in the</p> <p>10 account or the total amount that was in excess</p> <p>11 in the account or that was believed to be in</p> <p>12 excess in the account?</p> <p>13 MR. WOOD: Objection to form.</p> <p>14 A. I'm sorry, was in excess of what?</p> <p>15 Q. Let me back up.</p> <p>16 What did you understand the 769</p> <p>17 million to represent?</p> <p>18 A. To be securities, I believe mostly</p> <p>19 government securities or primarily government</p> <p>20 securities, that were held in this account, or</p> <p>21 may have been more than one actual account, for</p> <p>22 customer protection purposes.</p> <p>23 Q. Did you understand there to be an</p> <p>24 excess in that account that could be</p> <p>25 transferred?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 Messineo - Highly Confidential</p> <p>2 A. I understood there to be cash as</p> <p>3 well as securities in the account, and so the</p> <p>4 total value of the account -- and, again, this</p> <p>5 may have been more than one account. The total</p> <p>6 value of them I understood to be substantially</p> <p>7 more than 769 million, but the portion of it</p> <p>8 that was represented by securities I understood</p> <p>9 to be 769 million, or at least that's what had</p> <p>10 been reported by the Lazard people for purposes</p> <p>11 of negotiation of this issue which had come up</p> <p>12 that evening.</p> <p>13 Q. And you did not understand that to</p> <p>14 only be 769 million in the excess as opposed to</p> <p>15 the entirety of the account?</p> <p>16 A. No, I don't -- I'm not sure what you</p> <p>17 mean, excess of what.</p> <p>18 Q. Excess of the amount required by SEC</p> <p>19 Rule 15c3-3.</p> <p>20 A. Oh, oh, oh. Okay. I see what you</p> <p>21 are saying. I'm not sure that people knew at</p> <p>22 this point how much in this account was what</p> <p>23 was required to be in the account. My</p> <p>24 understanding is that this is something that</p> <p>25 requires approval of the SEC and the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 calculations are fairly complicated and there</p> <p>3 might be excess funds as of that date or there</p> <p>4 might not be excess funds as of that date and</p> <p>5 as of some future date it would be different</p> <p>6 depending on what happened with customers and</p> <p>7 customer positions, and so there might be funds</p> <p>8 that were excess, but whether all or part of</p> <p>9 these were excess on that day I don't know.</p> <p>10 Q. Okay. Well, do you understand now,</p> <p>11 though, what I am asking whether or not it was</p> <p>12 believed that the 769 was in the excess or if</p> <p>13 it was 769 in the entirety of the account?</p> <p>14 A. I believe the general understanding</p> <p>15 is that this was the entire account, the cash</p> <p>16 and the securities, and that some part of it</p> <p>17 would ultimately turn out to be excess or might</p> <p>18 ultimately turn out to be excess.</p> <p>19 Q. Okay. All right.</p> <p>20 Let's go back to -- we were talking</p> <p>21 about paragraph 8 of your declaration and your</p> <p>22 understanding of the meaning of the clause "or</p> <p>23 securities of substantially the same nature and</p> <p>24 value," and I believe you had testified that</p> <p>25 you did not have a specific recollection of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 Messineo - Highly Confidential</p> <p>2 communicating your understanding of that phrase</p> <p>3 to any representative of Barclays; is that</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. And then I asked if you had any</p> <p>7 general recollection and I do not believe your</p> <p>8 answer was quite answering the question.</p> <p>9 So I will ask you again, do you</p> <p>10 recall generally meeting -- representing your</p> <p>11 understanding of that phrase to anybody who was</p> <p>12 a representative of Barclays?</p> <p>13 MR. WOOD: Objection to form.</p> <p>14 MR. HINE: Objection to form.</p> <p>15 MR. POLKES: You can answer.</p> <p>16 A. I don't recollect a specific</p> <p>17 conversation regarding this phrase with anyone</p> <p>18 at Barclays.</p> <p>19 Q. Okay. Who is Harvey Miller?</p> <p>20 A. Harvey Miller is a senior partner</p> <p>21 here.</p> <p>22 Q. Okay. And did you communicate your</p> <p>23 understanding of that phrase to Mr. Miller?</p> <p>24 A. At the time that this was written or</p> <p>25 ever?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 Q. Well, prior to the closing of the</p> <p>3 transaction.</p> <p>4 A. I don't know that I had a specific</p> <p>5 conversation with Mr. Miller about this phrase.</p> <p>6 Q. To your knowledge, was a provision</p> <p>7 regarding maturing securities required in any</p> <p>8 way by a statute or regulation?</p> <p>9 A. Was a provision regarding maturing</p> <p>10 securities required?</p> <p>11 Q. That's how I am characterizing what</p> <p>12 you described the meaning of the phrase to be,</p> <p>13 but was -- is there any statute or regulation</p> <p>14 that requires provision to be made for maturing</p> <p>15 securities such as in this situation?</p> <p>16 A. I don't know of a regulation that</p> <p>17 requires a provision to be made. My</p> <p>18 understanding is that the securities in the</p> <p>19 account would mature and would need to be</p> <p>20 reinvested.</p> <p>21 Q. Okay. Was there any list by CUSIP</p> <p>22 or otherwise of the 769 million that were to be</p> <p>23 transferred over to Barclays?</p> <p>24 A. There was not one that I was aware</p> <p>25 existed at that time.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 Messineo - Highly Confidential</p> <p>2 Q. So do I understand your testimony to</p> <p>3 believe that -- to be that you believed that</p> <p>4 the provision was necessary because there may</p> <p>5 have only been \$769 million in securities in</p> <p>6 that customer reserve account on the date of</p> <p>7 the agreement?</p> <p>8 MR. WOOD: Objection to the form.</p> <p>9 A. I wouldn't say it that way.</p> <p>10 There -- what was described was that Barclays</p> <p>11 was to get 769 million of particular securities</p> <p>12 that existed in particular accounts on a</p> <p>13 particular day and then it went on, as it</p> <p>14 needed to in order to make sense, to say that</p> <p>15 it could get substantially the same securities</p> <p>16 since those particular securities that were</p> <p>17 there on that day may not be there on the day</p> <p>18 when it talked about the account being</p> <p>19 accessed, which is going to be at some time in</p> <p>20 the future when regulatory conditions were</p> <p>21 satisfied.</p> <p>22 Q. If there were more than 769 million</p> <p>23 of securities in that account, would there have</p> <p>24 been any particular 769 that had to be used to</p> <p>25 pay this out in the absence of the provision</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 that you added?</p> <p>3 MR. HINE: Objection to form.</p> <p>4 A. I think the understanding was that</p> <p>5 the 769 million was all the securities that</p> <p>6 were in the account.</p> <p>7 Q. Okay. So if that were not correct,</p> <p>8 then it would not have been necessary to have</p> <p>9 this phrase?</p> <p>10 MR. WOOD: Objection to form.</p> <p>11 A. No, it would still have been</p> <p>12 necessary to have the phrase.</p> <p>13 Q. Okay. That's what I am trying to</p> <p>14 understand.</p> <p>15 Why would it have been necessary to</p> <p>16 have that phrase if Barclays was not being</p> <p>17 given a claim to a particular 769 million, but</p> <p>18 just 769 million in securities in that account</p> <p>19 of which there may have been significantly more</p> <p>20 than 769 million?</p> <p>21 MR. HINE: Object to form.</p> <p>22 MR. WOOD: Object to the form.</p> <p>23 A. I'm not quite sure I am capturing</p> <p>24 the point that you are trying to make here.</p> <p>25 There were particular securities in the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 Messineo - Highly Confidential</p> <p>2 account. There were believed to be particular</p> <p>3 securities in the account. There wasn't a list</p> <p>4 of them, but whatever they were they were, and</p> <p>5 they were in the account -- they were believed</p> <p>6 to be worth 769 million. I guess if there was</p> <p>7 a lot more, then they would only receive 769</p> <p>8 million.</p> <p>9 Q. Right, well, that's my point. If it</p> <p>10 was not correct that there was only 769 million</p> <p>11 in the account, if that was actually only in</p> <p>12 excess but there was actually substantially</p> <p>13 more in the account as a whole, would it have</p> <p>14 been necessary to have this clause?</p> <p>15 MR. HINE: Objection to form.</p> <p>16 MR. WOOD: Objection to form.</p> <p>17 A. It would have still been necessary</p> <p>18 to have the clause because the securities could</p> <p>19 change. Whether there were 769 or 770, the</p> <p>20 securities could still have changed over the</p> <p>21 time that was going to go by before it was</p> <p>22 possible for them to be withdrawn.</p> <p>23 Q. Do you know if anybody from Lehman</p> <p>24 discussed that interpretation of the clause</p> <p>25 with anybody from Barclays?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 MR. WOOD: Objection to form.</p> <p>3 MR. POLKES: I'm sorry, what</p> <p>4 interpretation?</p> <p>5 MS. NEUHARDT: Excuse me?</p> <p>6 MR. POLKES: What interpretation?</p> <p>7 MS. NEUHARDT: The interpretation</p> <p>8 that is set forth in paragraph 8 of your</p> <p>9 declaration.</p> <p>10 A. I do not know if anyone discussed</p> <p>11 it.</p> <p>12 Q. I am going to hand you what has been</p> <p>13 marked as Deposition Exhibit 1 in prior</p> <p>14 depositions. My first question will be do you</p> <p>15 recognize this document?</p> <p>16 A. Yes. This appears to be the Asset</p> <p>17 Purchase Agreement.</p> <p>18 Q. Okay. And did you participate in</p> <p>19 the drafting or negotiation of this document?</p> <p>20 A. I did.</p> <p>21 Q. Okay. If you could turn to page 6,</p> <p>22 please, and look at the definition of purchased</p> <p>23 assets. I am not going to force you to read</p> <p>24 all the subdivisions, but the intro to that</p> <p>25 definition says: "Purchased assets means all</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 Messineo - Highly Confidential</p> <p>2 of the assets of seller and its subsidiaries</p> <p>3 used in connection with the business (excluding</p> <p>4 the excluded assets) including," and then it</p> <p>5 lists out A through S of specified assets. Is</p> <p>6 that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. Did you understand the list</p> <p>9 of A through S to be an exclusive list?</p> <p>10 A. No, I wouldn't say exclusive.</p> <p>11 Primary, but not exclusive.</p> <p>12 Q. Okay. And what did you, in general,</p> <p>13 understand the meaning of the phrase "all of</p> <p>14 the assets of seller and its subsidiaries used</p> <p>15 in connection with the business" to mean?</p> <p>16 A. Well, there was -- what was being</p> <p>17 sold was an operating business and it was being</p> <p>18 done through the form of an asset transfer.</p> <p>19 Q. Okay.</p> <p>20 A. So basically it was the assets that</p> <p>21 were used in the business other than things</p> <p>22 that were being excluded.</p> <p>23 Q. Okay. And if you look at page 2 at</p> <p>24 the definition of business, it says: "The</p> <p>25 business means the U.S. and Canadian investment</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 banking and capital markets businesses of</p> <p>3 seller, including the fixed income and equities</p> <p>4 cash trading, brokerage, dealing, trading and</p> <p>5 advisory businesses, investment banking</p> <p>6 operations and LBI's business as a futures</p> <p>7 commission merchant."</p> <p>8 In your role in negotiating and</p> <p>9 drafting that -- this agreement, what was your</p> <p>10 understanding of this definition to mean?</p> <p>11 MR. HINE: Objection to form.</p> <p>12 A. Again, without simply repeating the</p> <p>13 words, the business as a whole was being sold.</p> <p>14 Basically the capital markets and investment</p> <p>15 banking business of Lehman as an operating unit</p> <p>16 were being sold as a whole.</p> <p>17 Q. Okay. Now, when -- now, the</p> <p>18 Clarification Letter was drafted after this</p> <p>19 document; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. When you were drafting the</p> <p>22 Clarification Letter and based on your</p> <p>23 understanding of the definitions of purchased</p> <p>24 assets and business and the APA as a whole, did</p> <p>25 you understand the securities to be contained</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 Messineo - Highly Confidential</p> <p>2 in LBI's customer reserve account to be part of</p> <p>3 the assets primarily used in the business?</p> <p>4 MR. WOOD: Objection to the form.</p> <p>5 MR. POLKES: I'm sorry, if you could</p> <p>6 just clarify whether you are asking him to</p> <p>7 sort of give an opinion about that now or</p> <p>8 if he had thought about it back when he was</p> <p>9 drafting the Clarification Letter, I would</p> <p>10 appreciate that.</p> <p>11 MS. NEUHARDT: It's the time of the</p> <p>12 Clarification Letter that matters, so...</p> <p>13 MR. POLKES: Had you thought about</p> <p>14 it then one way or the other?</p> <p>15 A. Well, at the time of the</p> <p>16 Clarification Letter as opposed to the time of</p> <p>17 the Asset Purchase Agreement are different</p> <p>18 things. Yes, at the time of the Clarification</p> <p>19 Letter, yes.</p> <p>20 Q. Okay. So you considered it at that</p> <p>21 time to be part of the purchased assets, "at</p> <p>22 that time" being the time of the Clarification</p> <p>23 Letter?</p> <p>24 A. Well, the Clarification Letter, I</p> <p>25 think, makes it clear that they are part of the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 purchased assets.</p> <p>3 Q. Okay. And that's because it was --</p> <p>4 they were part of the assets used in the</p> <p>5 business that was being acquired by Barclays?</p> <p>6 MR. HINE: Objection to form.</p> <p>7 MR. KAY: Objection to form.</p> <p>8 A. Well, it's because it's specifically</p> <p>9 referred to. I am not quite sure what you are</p> <p>10 asking. We just read the -- we just looked at</p> <p>11 the sentence that specifically says that those</p> <p>12 assets come along.</p> <p>13 Q. I understand, but I am asking</p> <p>14 whether or not you believed that regardless of</p> <p>15 whether they was specified in the clarification</p> <p>16 letter, they nonetheless were assets that were</p> <p>17 used in the business?</p> <p>18 A. Oh, I don't think it would have been</p> <p>19 clear one way or another without the</p> <p>20 specification in the clarification letter how</p> <p>21 you would have treated those assets.</p> <p>22 Q. So you don't -- you wouldn't have</p> <p>23 had an opinion one way or the other whether</p> <p>24 they would have been an asset under the Asset</p> <p>25 Purchase Agreement that was being transferred?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 32	Page 33
<p>1 Messineo - Highly Confidential</p> <p>2 A. Oh --</p> <p>3 MR. WOOD: Objection to the form.</p> <p>4 A. Opinion one way or another, I would</p> <p>5 say probably the better reading of things</p> <p>6 absent the Clarification Letter would be that</p> <p>7 they would not have been included, because my</p> <p>8 understanding is that they were basically cash</p> <p>9 and government securities and those weren't</p> <p>10 within the category of things that was intended</p> <p>11 generally to transfer.</p> <p>12 Q. It's your understanding that an</p> <p>13 account that was used particularly for the</p> <p>14 business of maintaining a reserve for customers</p> <p>15 would not have been used in the business, would</p> <p>16 not have been an asset used in the business?</p> <p>17 MR. HINE: Objection to form.</p> <p>18 MR. WOOD: Objection to form.</p> <p>19 A. It's not a question being used in</p> <p>20 the business or not being used in the business.</p> <p>21 The question is was it intended to go as part</p> <p>22 of what was being transferred or not, and in</p> <p>23 general the terms of the agreement as, you</p> <p>24 know, I think was understandable for this type</p> <p>25 of situation, did not involve transfer of cash</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential</p> <p>2 or highly liquid securities. That was just --</p> <p>3 the buyer would have to pay for something that</p> <p>4 would just be round-tripped. It wouldn't make</p> <p>5 any sense particularly. So those assets would</p> <p>6 generally be excused even though they would</p> <p>7 otherwise might be considered part of the</p> <p>8 assets used in the business. Obviously there</p> <p>9 is always some cash used in the conduct of any</p> <p>10 business.</p> <p>11 Q. Okay. And is your view of that any</p> <p>12 different today?</p> <p>13 A. No.</p> <p>14 MS. NEUHARDT: If we can take a</p> <p>15 short break, I am probably through, but I</p> <p>16 just want to --</p> <p>17 MR. POLKES: Okay. That's fine.</p> <p>18 THE VIDEOGRAPHER: The time is 2:37.</p> <p>19 We are going off the record.</p> <p>20 (Recess was taken from 2:37 to</p> <p>21 2:45.)</p> <p>22 THE VIDEOGRAPHER: The time is 2:45.</p> <p>23 We are back on the record.</p> <p>24 BY MS. NEUHARDT:</p> <p>25 Q. Mr. Messineo, I just want to go back</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Messineo - Highly Confidential
to the last discussion we were having.
In the APA do I correctly understand
you to say that you believe the APA was
essentially ambiguous on whether or not the
customer reserve account would have been a
purchased asset?

MR. WOOD: Objection to the form.

A. Yes, before the Clarification Letter
the APA, I think it was an issue that people
could have debated.

(Continued on next page to include
jurat.)

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Messineo - Highly Confidential
Q. Okay. And the Clarification Letter
then would have been resolving any ambiguity?

A. It did.

MS. NEUHARDT: Okay. I have no
further questions.

MR. WOOD: I have nothing.

MR. HINE: No questions.

MR. KAY: No questions.

THE VIDEOGRAPHER: The time is 2:46.
We are going off the record.

(Time noted: 2:46 p.m.)

ROBERT MESSINEO

Subscribed and sworn to before me
this day of 2010.

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C E R T I F I C A T E

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

I, KRISTIN KOCH, a Notary Public
within and for the State of New York, do
hereby certify:

That ROBERT MESSINEO, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that such
deposition is a true record of the
testimony given by such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 1st day of April, 2010.

KRISTIN KOCH, RPR, RMR, CRR, CLR

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-----I N D E X-----

WITNESS	EXAMINATION BY	PAGE
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ROBERT MESSINEO	MS. NEUHARDT	7
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-----EXHIBITS-----

DEPOSITION	PAGE LINE
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Declaration of Robert L. Messineo....	7 2
Exhibit 683	
Declaration of Victor I. Lewkow.....	13 11

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ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: In re: Lehman Brothers

Dep. Date: April 1, 2010

Deponent: Robert Messineo

CORRECTIONS:

Pg. Ln.	Now Reads	Should Read	Reason
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Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS ____ DAY OF _____, 2010.

(Notary Public) MY COMMISSION EXPIRES: _____

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